Filed 7/23/19 In re Travis H. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re TRAVIS H., a Person Coming Under the Juvenile Court Law.	B286474 (Los Angeles County Super. Ct. No. DK17020A)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.H., Petitioner and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robert S. Wada, Judge. Reversed.

Niti Gupta for Petitioner and Appellant K.H.

Patricia G. Bell, by appointment of the Court of Appeal, for T.H.

K.H., the paternal grandfather of T.H., appeals from an order of the trial court denying his request for de facto parent status.[1] (Cal. Rules of Court, rule 5.502(10).) We reverse.

BACKGROUND

T.H. was removed from his parents in San Bernardino County on September 9, 2015 and returned to his parents' home on July 5, 2016.[2] On February 7, 2017, the Department filed a petition under Welfare and Institutions Code[3] section 387, removed T.H. from his parents, and placed him with appellant.

At the March 28, 2017 section 387 hearing, the court sustained the petition, removed T.H. from his parents, and ordered reunification services. The court also ordered an Interstate Compact for the Placement of Children (ICPC) assessment for maternal grandparents, who lived in Tennessee. T.H. remained with appellant pending the results of the assessment.

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[1] The Los Angeles Department of Children and Family Services (Department) does not take a position in this appeal. The respondent's brief was filed by counsel for T.H.

[2] We do not have the record in the underlying dependency case and therefore rely in part on statements by the court, Department counsel, and Father's counsel. The case was transferred from San Bernardino County to Los Angeles County at an unspecified time.

[3] Further undesignated statutory references are to the Welfare and Institutions Code.

Appellant filed a De Facto Parent Request on September 11, 2017. He asserted in his application that T.H. had lived with him from May 20, 2016, and that he had had responsibility for T.H.'s day-to-day care from that point on. He stated that, outside of school T.H. spent 100 percent of his time with him and described the activities he engaged in with T.H., including swimming, skateboarding, visiting the park, boy scouts, karate lessons, and after-school programs. He indicated that he met regularly with T.H.'s therapist and received information about T.H.'s development. Appellant also submitted numerous letters of support from family members, friends, and neighbors familiar with the relationship between T.H. and appellant.

On September 26, 2017, the court ordered T.H. placed with maternal grandparents in Tennessee, but stayed the order pending the decision on appellant's de facto parent request.

At the November 16, 2017 hearing on appellant's request, the court found that T.H. had been with appellant since February 7, 2017, for approximately nine months. The court acknowledged that T.H. was psychologically bonded to appellant and that appellant had regularly attended the juvenile court hearings. However, the court found that appellant did not have unique information unavailable to other parties because the Department would be able to obtain information from T.H.'s therapist. The court further reasoned that there was no possibility a future order might permanently foreclose appellant's contact with T.H. The court thus denied the request and lifted the stay on placement with maternal grandparents. The court ordered the

Department to facilitate telephonic and skype visits and to provide airfare assistance for the parents and for appellant.

DISCUSSION

"'De facto parent' means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period." (Cal. Rules of Court, rule 5.502(10).) "The de facto parent may: [¶] (1) Be present at the hearing; [¶] (2) Be represented by retained counsel or, at the discretion of the court, by appointed counsel; and [¶] (3) Present evidence." (Cal. Rules of Court, rule 5.534(a).)

"De facto parent status 'provides a nonbiological parent who has achieved a close and continuing relationship with a child the right to appear as a party, to be represented by counsel, and present evidence at dispositional hearings. Absent such status, very important persons in the minor's life would have no vehicle for "assert[ing] and protect[ing] their own interest in the companionship, care, custody and management of the child" [citation] and the court would be deprived of critical information relating to the child's best interests.' [Citation.]" (*In re Bryan D.* (2011) 199 Cal.App.4th 127, 141 (*Bryan D.*).)

"Whether a person falls within the definition of a 'de facto parent' depends strongly on the particular individual seeking such status and the unique circumstances of the case. However, the courts have identified several factors relevant to the decision. Those considerations include whether (1) the child is 'psychologically bonded' to the adult; (2)

the adult has assumed the role of a parent on a day-to[-]day basis for a substantial period of time; (3) the adult possesses information about the child unique from the other participants in the process; (4) the adult has regularly attended juvenile court hearings; and (5) a future proceeding may result in an order permanently foreclosing any future contact with the adult. [Citations.] . . . Because a court can only benefit from having all relevant information, a court should liberally grant de facto parent status. If the information presented by the de facto parent is not helpful, the court need not give it much weight in the decisionmaking process. [Citation.]" (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 66–67, fns. omitted.)

"The denial of a petition for de facto parent status is reviewed for abuse of discretion. [Citation.] 'In most cases, the lower court does not abuse its discretion if substantial evidence supports its determination to grant or deny de facto parent status.' [Citation.]" (*In re Jacob E.* (2004) 121 Cal.App.4th 909, 919 (*Jacob E.*).)

It is undisputed that T.H. was psychologically bonded to appellant and that appellant provided daily care for T.H. for at least nine months.[4] It is also undisputed that appellant regularly attended the juvenile court hearings. The court denied appellant's de facto parent petition because it believed that he did not possess unique information and that no future proceedings would permanently foreclose appellant's

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[4] The trial court found that appellant had been caring for T.H. since February 7, 2017, not May 20, 2016, as appellant asserted in his de facto parent request. There is nothing in the record to support appellant's assertion; therefore, we will rely on the February 7 date.

contact with T.H. We conclude that the court's order is not supported by substantial evidence.

"[W]here a grandparent or other close relative has cared for a dependent child for an extended period of time and has never done anything to cause substantial or serious harm of any kind to that child, there ought to be a very good reason for denying de facto status." (*In re Vincent C.* (1997) 53 Cal.App.4th 1347, 1358 (*Vincent C.*); see also *Jacob E.*, *supra*, 121 Cal.App.4th at p. 920 ["absent physical or sexual abuse, there ought to be a 'very good reason' for denying de facto parent status to a grandparent or other close relative who has cared for a dependent child for an extended period of time"].)

For example, in *Jacob E.*, while the child was in the grandmother's care, the grandmother neglected his medical and dental care, was uncooperative with the Department, failed to enroll him in school, and hit him with a stick. The court thus affirmed the juvenile court's denial of the de facto parent application. (121 Cal.App.4th at p. 920.)

Similarly, in *In re Michael R.* (1998) 67 Cal.App.4th 150 (*Michael R.*), the grandmother provided day-to-day care for five months, was present at many court hearings, and was "at risk of having her relationship with the children severed." (*Id.* at p. 156.) Thus, "[o]n the face of things, the grandmother would ordinarily have met her burden of showing she was a de facto parent." (*Ibid.*) Nonetheless, the court affirmed the denial of her application because she defied court orders to keep her son away from the children, refused to recognize that he

inflicted physical abuse on one child, and absconded with the children to Texas. (*Id.* at p. 157; see also *In re Merrick V.* (2004) 122 Cal.App.4th 235, 257 [although grandmother assumed daily care and was psychologically bonded with children, she left them in the care of their mother, "whom she knew used drugs and had an unstable lifestyle," resulting in them being "found wandering outside . . . in their dirty diapers and tested positive for methamphetamine and marijuana"].)

Unlike *Jacob E.*, *Michael R.*, and *Merrick V.*, there was no evidence here that appellant ever neglected or abused T.H. or was uncooperative with the Department. To the contrary, appellant's application and the numerous letters in support indicate that appellant provided a stable home, with loving care and the involvement of many family members and friends. Thus, there should have been "a 'very good reason'" for denying the request for de facto parent status. (*Jacob E.*, *supra*, 121 Cal.App.4th at p. 920.) The record here does not contain such a reason.

Respondent contends that appellant did not care for T.H. for an extended period of time. However, neither the rule nor the caselaw specifies a minimum time period. "Time, in and of itself, does not determine whether foster parents are de facto parents. It is the information and interest they have to contribute to the proceedings which allows them standing." (*Christina K. v. Superior Court* (1986) 184 Cal.App.3d 1463, 1468.) Thus, time periods from nine months to several years have been found sufficient to constitute "a substantial period." (Cal. Rules of Court, rule 5.502(10); see *In re Ashley P.* (1998)

62 Cal.App.4th 23, 28 (*Ashley P.*) [reversing denial of motion for de facto parent status where grandmother cared for children for two years and there was "no evidence that [she] caused these children psychological harm or failed to attend to their psychological needs"]; *Vincent C.*, *supra*, 53 Cal.App.4th at pp. 1358-1359 [reversing denial of request for de facto parent status for grandmother who cared for children for three years even though she struggled to control the children]; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 602 [grandmother who cared for child during first nine months of his life and attended every hearing entitled to de facto parent status].)

Appellant had the sole day-to-day care for T.H. for nine months and thus fulfilled T.H.'s "physical and psychological needs for care and affection . . . for a substantial period." (Cal. Rules of Court, rule 5.502(10).)

The trial court found that appellant did not have unique information to support de facto parent status. However, by virtue of having provided day-to-day care for T.H. for nine months, appellant possessed unique information about T.H. (See *Ashley P.*, *supra*, 62 Cal.App.4th at p. 27 ["As their caretaker, appellant had special information about the children"]; *Vincent C., supra,* 53 Cal.App.4th at p. 1357 ["it is because of [the grandmother's] extended involvement and familiarity with the children that her input regarding their future care is so important to the children, not just to [her]"]; *In re B.G.* (1974) 11 Cal.3d 679, 693 [noting that "the views of such persons who have experienced close day-to-day contact with the child deserve

consideration"].) "'The simple fact that a person cares enough to seek and undertake to participate goes far to suggest that the court would profit by hearing his views as to the child's best interests . . . .' [Citation.]" (*Ashley P.*, *supra*, 62 Cal.App.4th at p. 27.)

The trial court further found that there was no risk that a future order would permanently foreclose appellant's contact with T.H. However, respondent asserts that the juvenile court has terminated parental rights and designated maternal grandparents as prospective adoptive parents. In fact, respondent contends that the court's order should be affirmed because T.H. is "now simply waiting for his adoption to finalize." As appellant points out, the fact that he was unaware of these developments indicates that he actually is at risk of permanently losing contact with T.H. in the future.

"The juvenile court should not deny a de facto parent application on grounds that allowing the de facto parent's participation will interfere with the proceedings or will interfere with the goal of providing a permanent, stable home for the child. [Citations.]" (*Michael R.*, *supra*, 67 Cal.App.4th at p. 155.)

Because there is not a good reason for denying appellant de facto parent status, we conclude that the court's denial of the request is not supported by substantial evidence. (See *Bryan D.*, *supra*, 199 Cal.App.4th at p. 146 ["juvenile court abused its discretion in denying grandmother de facto parent status because there was no substantial evidence that she had betrayed or abandoned the parental role, that she had subjected Bryan to serious abuse, that she had inflicted substantial harm on Bryan, or that she had acted in a manner fundamentally

inconsistent with the parental role such that she lost the privilege of participation in proceedings concerning Bryan"].)

DISPOSITION

The order denying appellant de facto parent status is reversed. The case is remanded for entry of a new order granting appellant de facto parent status.

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WILLHITE, J.

We concur:

MANELLA, P. J.

CURREY, J.